

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
(240) 777-6600

www.montgomerycountymd.gov/content/council/boa/index.asp

Case No. S-2685

PETITION OF AVALON EDUCATION GROUP

OPINION OF THE BOARD

(Opinion Adopted October 3, 2007)

(Effective Date of Opinion: October 25, 2007)

Case No. S-2685 is a petition for a special exception, pursuant to Section 59-G-2.19 of the Zoning Ordinance, to permit a private educational institution. The Hearing Examiner for Montgomery County held a hearing on the application on March 30, 2007, closed the record in the case on May 29, 2007, and on June 19, 2007 issued a Report and Recommendation for approval of the special exception.

The subject property is Parcels 770, 765, 801, located at 22821 and 22901 Frederick Road, Clarksburg, Maryland, 20871, in the R-200 Zone.

Decision of the Board: Special Exception **Granted**, Subject
To Conditions Enumerated Below.

The Board of Appeals considered the Hearing Examiner's Report and Recommendation at its Worksession on July 11, 2007. The Report and Recommendation contained the following recommended condition:

Before the special exception may take effect, Petitioner must submit a revised Site Plan depicting privacy fencing along the property lines between the subject site and the adjacent McKenzie property. If Petitioner's intent is to provide fencing along the entire perimeter of the site, as stated in the Statement of Operations, Exhibit 3, Petitioner shall depict such fencing on the revised Site Plan. The revised Site Plan shall include a legend identifying the meaning of each line type, including the line designating fencing.

At the July 11, 2007 Worksession, the Board deferred action on the special exception pending submission of a revised site plan. On September 12, 2007, the Board received a letter from Soo Lee Cho, Esquire, on behalf of Avalon Education Group. Ms. Lee-Cho's letter enclosed the revised site plan, which is entered into the special exception record as Exhibit No. 64(a). The Board again considered the Report and Recommendation, together with the Revised Site plan, at its Worksession on October 3, 2007. After careful consideration and review of the record in the case, on a motion by Donna L. Barron, Vice-Chair seconded by Catherine G. Titus, with Wendell M. Holloway, Caryn L. Hines and Allison Ishihara Fultz, Chair in agreement the Board adopts the Hearing Examiner's Report and Recommendation and **grants** the special exception subject to the following conditions:

1. Petitioner shall be bound by all of the testimony of its witnesses and exhibits of record, including the Revised Site Plan [Exhibit No. 64(a)], the Landscape Plan, Exhibit 57(g), and the Lighting Plan, Exhibit 57(f), and by the representations of counsel to the extent that such evidence and testimony are identified in the Hearing Examiner's report and in the Opinion of the Board.
2. Approval by the Planning Board of a preliminary plan of subdivision under Chapter 50 of the Montgomery County Code shall be required.
3. Enrollment shall be limited to 600 students during the academic year and 200 students during the summer program.
4. Classes shall take place Monday through Friday only. Hours of operation during the school year shall begin with student arrival starting no earlier than 7:30 a.m. and classes starting no earlier than 8:50 a.m. Classes shall end no later than 3:15 p.m., and final student departures shall take place by 6:00 p.m. Regularly scheduled outdoor play or exercise periods shall take place at separate times for each of the lower, middle and upper schools.
5. Hours of operation for the summer program shall be 9:00 a.m. to 3:00 p.m., Monday through Friday, from mid-June until early August.
6. The management of traffic and parking activities in connection with The Avalon School shall be carried out as set forth in these conditions of approval and in the submitted Transportation Management Plan ("TMP"), Exhibit 57(k), attached hereto as Appendix A. The TMP shall be fully implemented. In the event of a conflict between a condition of approval and a provision of the TMP, the condition imposed by the Board of Appeals shall take precedence. The TMP may be amended without modification of the special exception, except as to essential elements of the special exception such as maximum enrollment and number of staff, with the written consent of a majority of the non-school representatives on the Community Liaison Council required under Condition 23 below. Any such amendment shall be promptly transmitted to the Board of Appeals, the Zoning Enforcement Division of the Department of Permitting Services, and the

Development Review Division of the Maryland-National Capital Park & Planning Commission. The Board of Appeals reserves the right to review any changes to the TMP on its own initiative or for good cause shown. Such review may include a public hearing, at the Board of Appeals' discretion.

7. All student drop-offs and pick-ups shall occur on site. All measures necessary to prevent any portion of the drop-off or pick-up queue from standing in or blocking in any way the travel lanes of MD Route 355 shall be taken, including the measures outlined in the Transportation Management Plan and, if necessary, reducing enrollment to the point where traffic can be safely managed on site.
8. Trips to and from the site shall not exceed 420 during either the site's morning or afternoon peak periods. All measures necessary to accomplish this shall be taken, including the measures outlined in the Transportation Management Plan and, if necessary, reducing enrollment to the point where the number of peak hour trips drops below 420. To monitor compliance with this requirement, Petitioner shall carry out traffic counts for a minimum of three normal school days during the fall of each year that The Avalon School is in session at this location, starting when enrollment reaches 450 students. The results of these counts shall be timely provided to all members of the Community Liaison Council required by Condition 23 below, as well as to the Board of Appeals, the Zoning Enforcement Division of the Department of Permitting Services, and the Development Review Division of the Maryland-National Capital Park & Planning Commission. The results of these counts shall be provided to the Board of Appeals as part of the annual report required by Condition 24 below.
9. The Board of Appeals reserves jurisdiction to impose additional conditions related to traffic, including a lower cap on enrollment, if future evidence so warrants.
10. On-street parking in the vicinity of the subject site in connection with any activity of The Avalon School shall be prohibited at all times. All parking for regular school-day activities shall be limited to the parking spaces available on site. Parking permits for students and others shall be strictly controlled to ensure that the number of parking spaces available on site is sufficient to accommodate all vehicles driving to the site during the school day.
11. Parking for special events, i.e. events taking place outside the regular school day, shall be limited to the number of parking spaces available on site plus any off-site parking that The Avalon School arranges for those attending a special event. To the extent that parking privileges on the subject site are extended to the Lakewood Church of God located across MD 355 in exchange for permission for those attending events at The Avalon School to park on the church site, parking in connection with church activities shall be limited to once a month, and must take place during time periods when no activities are taking place at The Avalon School.

12. On each occasion when The Avalon School anticipates that a special event will attract more than 160 attendees, off-site parking arrangements shall be made at the Lakewood Church of God, Clarksburg High School, or other locations. On each occasion when the church parking lot across MD 355 is designated for overflow parking, The Avalon School shall provide either a crossing guard to assist pedestrians in crossing MD 355, if county regulations permit, or a van shuttle service between the church parking lot and the school site.
13. The Board of Appeals reserves jurisdiction to impose additional conditions related to parking, including a limit on the number or timing of special events, or a lower cap on enrollment, if future evidence so warrants.
14. Petitioner shall construct a five-foot-wide concrete sidewalk along the site's MD 355 frontage, and shall make a good-faith effort to obtain the right-of-way necessary to extend this sidewalk off-site to the intersection of MD 355 with Shawnee Lane.
15. Petitioner shall construct a lead-in sidewalk from MD 355 to each of the proposed driveways on the subject site.
16. Petitioner shall satisfy all requirements necessary to obtain access permits from the State Highway Administration, including (i) ensuring that both access points meet applicable sight distance requirements; (ii) restricting the site exit to right turns if required; (iii) constructing and providing the land necessary for a left-turn lane into the subject site from southbound MD 355; (iv) constructing deceleration and acceleration lanes into and out of the subject site; and (v) locating the entrance drive directly across MD 355 from the entrance to the Lakewood Church of God. In connection with the required deceleration and acceleration lanes, Petitioner shall make good-faith efforts to acquire the right-of-way necessary to construct these lanes to a length of 250 feet and a width of 16 feet. If these efforts are unsuccessful, Petitioner shall construct the deceleration and acceleration lanes to whatever dimensions are approved by the State Highway Administration.
17. All plantings shown on the Landscape Plan, Exhibit 57(g), shall be maintained in good condition and replaced if they die or reach the end of their useful lives. This requirement shall apply within the forest conservation area only to the extent such activity is permitted by the forest conservation easement.
18. The Avalon School may install one identification sign, within the size limits specified in the Zoning Ordinance, in the location and with the modest illumination shown on the Lighting Plan, Exhibit 57(f).
19. Site imperviousness must not exceed 28.7 percent. Any modification of the special exception that results in expansion of the school's facilities must be offset

by increasing contiguous land area so that impervious coverage does not exceed 28.7 percent.

20. Petitioner must satisfy the conditions stated in the Montgomery County Department of Permitting Services letter of March 1, 2007 granting conditional approval for the Preliminary Water Quality Plan prior to issuance of sediment control and/or building permit, as applicable, or at such earlier time as may be required by the Planning Board.
21. Petitioner must submit a Final Forest Conservation Plan that satisfies Section 109(B) of the Forest Conservation Regulations and is approved by the Planning Board prior to any clearing or grading on the property. The reforestation area at the rear of the property must be placed in a Category One forest conservation easement, to be recorded in the county land records. Site inspections by monitoring staff of the Maryland-National Capital Park & Planning Commission shall take place per Section 110 of the Forest Conservation Regulations.
22. Petitioner shall establish a Community Liaison Council ("CLC") to allow area residents to monitor the implementation of the Transportation Management Plan, and to establish a mechanism for residents to influence and shape the Plan should monitoring reveal that goals are not being met or conditions of this special exception are not being satisfied. The membership of the CLC shall consist of:
 - a. One to three representatives of the school administration.
 - b. One school parent or board member.
 - c. Any resident of an adjoining or confronting property who wishes to participate (an invitation to join the CLC shall be extended to all such residents at least 30 days before the first meeting).
 - d. A representative of a Clarksburg citizens' group such as the Clarksburg Citizens' Association.
 - e. A representative of the Planning Board.
 - f. The People's Counsel as *ex officio* member.

The CLC shall be organized and its first meeting conducted at least three months prior to commencement of construction, so that construction activities can be presented and discussed in advance of the start of work. The CLC shall meet at least three times per year for the first five years after its inception, and then at least annually unless and until the requirement for a CLC shall be deleted by the Board of Appeals. At least one meeting each year shall take place during the fall or early winter to discuss the results of the annual traffic counts.

23. Petitioner shall submit an annual report to the Board of Appeals during the fall season, which shall include, at a minimum, the results of the annual traffic counts required under Condition 9 above, minutes from each meeting of the CLC, a summary of implementation of the TMP during the previous 12 months, a

description of concerns raised by community members during that period and a description of how The Avalon School responded to those concerns.

24. Petitioner shall water down the site on a regular basis during construction, to minimize dust, and shall clean the windows of the McKenzie home, using a method acceptable to Mr. and Mrs. McKenzie, once a month during construction.
25. Petitioner must obtain and satisfy the requirements of all licenses and permits, including but not limited to building permits or a use-and-occupancy permit, necessary to implement the special exception as granted herein. Petitioners shall at all times ensure that the special exception use and facility comply with all applicable codes (including but not limited to building, life safety and handicapped accessibility requirements), regulations, directives and other governmental requirements.

Allison Ishihara Fultz
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 25th day of October, 2007.

Katherine Freeman
Executive Director

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book (See Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure.